

90-490^①

Supreme Court, U.S.

FILED

AUG 14 1990

JOSEPH F. SPANIOLO, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY J. FANT, Petitioner

vs.

BOARD OF TRUSTEES,
Regional Transit Authority
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

HENRY J. FANT
P. O. Box 14833
Cleveland, Ohio 44114

Petitioner, pro se

August 14, 1990



QUESTIONS PRESENTED FOR REVIEW

THE QUESTIONS PRESENTED IN THIS PETITION IS WHETHER OR NOT THE SUPREME COURT OF OHIO DENIED PETITIONER FANT THE DUE PROCESS OF THE LAW BY DELIBERATELY SUA SPONTE CREATING AN ERRONEOUS ISSUE NOT RAISED NOR BRIEFED ON APPEAL THEN FILING A JUDGMENT ENTRY UPON SAID ERRONEOUS ISSUE; TOTALLY IGNORING THE ISSUE BRIEFED BY PETITIONER FANT ON APPEAL.

QUESTIONS FOR THE WRITER

THE WRITER'S QUESTIONS OF THE WRITER

IN WRITING, AS IN THE READING OF THE WRITER

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IN WRITING, AS IN THE READING OF THE WRITER

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

No. _____

HENRY J. FANT, Petitioner

vs.

BOARD OF TRUSTEES
Regional Transit Authority
Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

To the honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States: Henry J. Fant, pro se, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above entitled case on April 4, 1990 erroneously creating an issue not presented nor briefed on appeal and totally ignoring the issue

REPORT

ON THE PROGRESS OF THE
WORK DURING THE YEAR
1887

BY THE SECRETARY

OF THE
AMERICAN ASSOCIATION
FOR THE ADVANCEMENT OF SCIENCE

NEW YORK: PUBLISHED BY THE ASSOCIATION
1888

THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE
was organized in 1847, and has since that time
been engaged in the promotion of the progress of
science, and the advancement of the human mind.
It has for its object the advancement of the
human mind, and the promotion of the progress
of science, and the advancement of the human
mind. It has for its object the advancement
of the human mind, and the promotion of the
progress of science, and the advancement of the
human mind.

briefed by the petitioner on appeal.

OPINION BELOW

The erroneous JUDGMENT ENTRY of the Supreme Court of Ohio is reproduced at Appendix A, page 1a and is reported at 50 Ohio St.3d.72. The REHEARING ENTRY of the Supreme Court of Ohio is reported in Ohio Official Reports, Advance Sheets, Vol. 51, No.4, June 4, 1990, page 705, and is reproduced at Appendix A, page 5a.

JURISDICTION

The REHEARING ENTRY of the Supreme Court of Ohio was entered on May 16, 1990. Petitioner Fant is a native born citizen of the United States and resides in the state of Ohio. This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which provides as follows:

"All persons born or naturalized in the United States,, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall



abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

STATUTES INVOLVED

The statutes involved are Ohio Revised Code 2705.02(A) which is quoted below:

"A person guilty of any of the following act may be punish for contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer."

The relevant part of Ohio Public Records Law, being R. C. 149.43(B) is also quoted below:

"All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time..."

THE STATE OF NEW YORK
IN SENATE
JANUARY 1, 1901.
REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1899.

ALBANY:

THE UNIVERSITY OF THE STATE OF NEW YORK
PRINTING OFFICE, 1901.

ALBANY: J. B. LIPPINCOTT & CO., PRINTERS.

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THE STATE OF NEW YORK
IN SENATE
JANUARY 1, 1901.
REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1899.

STATEMENT OF THE CASE

On July 12, 1988, Henry J. Fant (petitioner), filed a complaint for writ of mandamus against the Board of Trustees, Regional Transit Authority (respondent), seeking the permission of the respondent to review and/or make copies of the transfer rules of the respondent as those rules existed on July 13, 1986 and to review and/or make copies of the personnel file of bus operator Maggie Watkins.

On February 12, 1989, the trial court granted in part and denied in part the petitioner's motion for summary judgment. (See Appendix, page 6a.) Costs was assessed against the respondent. (Appendix, page 8a)

During the default inspection of the personnel file of Maggie Watkins, a dispute arose between the parties as to the authenticity of the records proffered and as to the legality of respondent admitting to removing and withholding that portion of Watkins' personnel records involving the complaint filed

with the respondent by petitioner Fant against Maggie Watkins. Petitioner Fant also were not furnished with the transfer rules in effect as of July 13, 1986. As a result of said disagreement between the parties, petitioner Fant filed a motion in the trial court on May 31, 1989 requesting aid in execution of judgment. The trial court denied said motion on August 15, 1989 on the alleged grounds that petitioner:

" ... failed to provide any authority in support of his motion."

(Appendix, page 7a)

The foregoing decision was appealed to the Supreme Court of Ohio on September 14, 1989 in which petitioner's sole proposition of law briefed the inherent powers of a court to enforce its own judgment entries.

The Supreme Court of Ohio filed a JUDGMENT ENTRY on April 4, 1990 erroneously ruling upon an issue not presented nor briefed by petitioner Fant on appeal, to wit:

with the responsibility of maintaining the
highest quality of service. It is our policy to
provide the best possible service to our customers.
We are committed to providing the highest quality
of service to our customers. We are committed to
providing the highest quality of service to our
customers. We are committed to providing the
highest quality of service to our customers.

Our commitment to service is reflected in our
policies and procedures. We are committed to
providing the highest quality of service to our
customers. We are committed to providing the
highest quality of service to our customers.
We are committed to providing the highest
quality of service to our customers. We are
committed to providing the highest quality of
service to our customers. We are committed to
providing the highest quality of service to our
customers. We are committed to providing the
highest quality of service to our customers.

"R.C. 149.43(C) authorizes only
'attorney fees' not compensation to
pro se litigants."

(Appendix, page 1a.)

In addition, the Supreme Court of Ohio erroneously claimed in its MANDATE to the trial court that an "Affidavit of Poverty filed." Finally, the Supreme Court did not rule upon the issue of the authority of the trial court to enforce its own judgment entry which was briefed by petitioner Fant.

(Appendix, page 3a.)

The respondent never made an appearance in the Supreme Court of Ohio.

By way of Motion for Rehearing, the petitioner clearly put the Supreme Court of Ohio on notice of its erroneous JUDGMENT ENTRY to no avail. (Appendix, page 5a.)

It is from said due process violation that the petitioner herein appeals to this honorable court.

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REASONS FOR GRANTING REVIEW

"A court has authority both under R.C. 2705.02(A) and on the basis of its inherent powers to punish the disobedience of its order with contempt proceedings." *Zakany v. Zakany* (1984), 9 Ohio St.3d 192.

The JUDGMENT ENTRY filed by the Supreme Court of Ohio in the case sub judice is a clear violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Cuyahoga County Court of Appeals do not need any one whomsoever to tell the court of its authority to enforce its own judgment entries. The Supreme Court of Ohio set forth the rights of the courts to enforce its own judgment entry in *Zakany, supra*; not to mention the "inherent powers" of a court to enforce its own judgment entries.

This honorable Court should not permit the Supreme Court of Ohio to avoid the Due Process mandate of the Constitution of the United States by erroneously creating and

REPORT FOR EXAMINING REVIEW

A report has been received from the
M.C. 1904-1905 and in the course of
the examination of the report the following
observations have been made:
1. The report is well written and
is of a high standard.

The following observations have been made:

1. The report is well written and is of a high standard.

2. The report is well written and is of a high standard.

3. The report is well written and is of a high standard.

4. The report is well written and is of a high standard.

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12. The report is well written and is of a high standard.

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14. The report is well written and is of a high standard.

15. The report is well written and is of a high standard.

16. The report is well written and is of a high standard.

and ruling upon an issue not presented nor briefed by petitioner Fant on appeal. As cited in petitioner's Motion for Rehearing, Issues not raised in the trial court cannot be raised for the first time in a reviewing court. **Szymanski v. Halle's Department Store** (1980), 63 Ohio ST.2d 195; **Blausey v. Stein** (1980), 61 Ohio St.2d 264.

The Supreme Court of Ohio was put on notice of its Due Process violation by way of petitioner's Motion for Rehearing filed in the action. In addition, petitioner quotes from page 2 of said Motion for Rehearing:

"This appeal has absolutely nothing to do with "attorney fees" and this court very well knows that is a true statement. This appeal is from the refusal of the court of appeals to enforce it own judgment entry filed in the case at bar. It is significant to note that appellant Fant's appeal stands unchallenged as the appellee R.T.A did not even bother to file so much as an appearance in this appeal, not to mention an opposing brief."

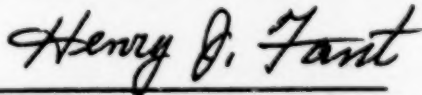
The court of appeals said in **State v. Khong** (1985), 29 Ohio App.3d 19, 26 that:

"Proceeding in contempt are sua generis in the law ... Contempt proceedings are means through which the court enforce their lawful orders. The power to punish for contempt is said to be inherent in the court and to exist independently from express constitutional provision or legislature enactment." Citing Cincinnati v. Cincinnati District Council 51 (1973, 35 Ohio St.2d 197,201, certiorari denied (1974), 415 U.S. 994.

CONCLUSIONS

The courts below should not be allowed to make a mockery of the Due Process Clause of the Constitution of the United States.

Respectfully submitted,



HENRY J. FANT, pro se
P. O. Box 14833
Cleveland, Ohio 44114

Petitioner's

APPENDIX A

The Supreme Court of Ohio

1990 TERM

To Wit: April 4, 1990

Henry J. Fant,	:	Case No. 89-1755
Appellant,	:	
	:	JUDGMENT ENTRY
v.	:	
	:	
Board of Trustees,	:	APPEAL FROM THE
Regional Transit	:	COURT OF APPEALS
Authority,	:	
Appellee.	:	

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed for the reason stated by that court in its journal entry: "R.C. 149.43(C) authorizes only 'attorney fees,' not compensation to pro se litigants."

It is further ordered that the appellee recover from the appellant its costs herein expended; and that a mandate be sent to the

Court of Appeals for Cuyahoga County to carry this judgment into executuon; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

(Court of Appeals No.56046).

/S/
THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

1990 TERM

To Wit: April 4, 1990

Henry J. Fant,	:	
Appellant,	:	Case No. 89-1755
v.	:	MANDATE
	:	
Board of Trustee	:	
Regional Transit	:	FOR YOUR INFORMATION
Authority,	:	
Appellee.	:	

To the Honorable Court of Appeals
Within and for the County of Cuyahoga,
Ohio.

The Supreme Court of Ohio commands you
to proceed without delay to carry the follow-
ing judgment in this cause into execution:

Judgment of the court of appeals is af-
firmed for the reason stated by that court
in its journal entry: "R.C. 149.43(C) au-
thorizes only 'attorney fees,' not compensa-
tion to pro se litigants."

Motion Fee, Affidavit of Poverty filed.

(Court of Appeals No. 56046)

/S/

THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

1990 TERM

To Wit: May 16, 1990

State of Ohio, ex rel.	:	Case No. 89-1755
Henry J. Fant,	:	
Appellant,	:	REHEARING ENTRY
v.	:	
	:	(Cuyahoga County)
Board of Trustees,	:	
Regional Transit	:	
Authority,	:	
Appellee.	:	

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

(Court of Appeals No. 56046)

**/S/
THOMAS J. MOYER
Chief Justice**

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COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

GERALD E. FUERST, CLERK OF COURTS

HENRY J. FANT
RELATOR

COURT OF APPEALS
NO. 56046

-VS-

BOARD OF TRUSTEES, R.T.A.
RESPONDENT

ORIGINAL ACTION
MOTION NO. 83087

DATE 2/13/89

JOURNAL ENTRY

MOTION BY RELATOR FOR SUMMARY JUDGMENT IS
GRANTED IN PART. WITHIN TWO WEEKS OF THE
DATE OF THIS ENTRY, RESPONDENT SHALL COMPLY
PURSUANT TO R.C. 149.43, WITH RELATOR'S PUB-
LIC RECORDS REQUEST DATED JULY 6, 1988.

RELATOR'S REQUEST FOR EXPENSES AND PRO SE
ATTORNEY FEES IS DENIED. RELATOR DOES NOT
HAVE COUNSEL. R. C. 149.43(C) ONLY AUTHORIZES
"ATTORNEY FEES," NOT COMPENSATION TO PRO SE
LITIGANTS.

RECEIVED FOR FILING
FEB 13, 1989

KRUPANSKY, J., CONCURS
NAHRA, J. CONCURS

GERALD E. FUERST, CLERK
BY /S/

/S/
PRESIDING JUDGE
JOHN T. PATTON

CHARTERED BY THE BOARD OF DIRECTORS
OF THE COMPANY

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OF THE COMPANY

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

GERALD E. FUERST, CLERK OF COURTS

HENRY J. FANT
RELATOR

COURT OF APPEALS
NO. 56046

-VS-

ORIGINAL ACTION

BOARD OF TRUSTEES,
R.T.A.

RESPONDENT MOTION NO. 92132

DATE 8/15/89

JOURNAL ENTRY

HAVING FAILED TO PROVIDE ANY AUTHORITY IN
SUPPORT OF HIS MOTION, RELATOR'S MOTION IN
AID OF EXECUTION OF JUDGMENT IS DENIED.

RECEIVED FOR FILING
AUG 15 1989
GERALD E. FUERST, CLERK
BY /S/

KRUPANSKY, J. CONCURS

NAHRA, J. CONCURS

/S/
PRESIDING JUDGE
JOHN T. PATTON

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES

DEPARTMENT OF PHYSICS

PHYSICS 311
LECTURE 10

WEDNESDAY, OCTOBER 10, 1990

LECTURE 10: ELECTRIC FIELDS
AND POTENTIALS

10/10/90

10/10/90

LECTURE 10: ELECTRIC FIELDS
AND POTENTIALS

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AND POTENTIALS

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

GERALD E. FUERST, CLERK OF COURTS

HENRY J. FANT
RELATOR

COURT OF APPEALS
NO. 56046

-VS-

ORIGINAL ACTION

BOARD OF TRUSTEES,
R.T.A

RESPONDENT MOTION NO. 89000

JOURNAL ENTRY

MOTION BY PETITIONER TO TAX COSTS IS GRANTED.
RESPONDENT TO PAY COSTS.

RECEIVED FOR FILING
MAR 23, 1989
GERALD E. FUERST, CLERK
BY /S/

KRUPANSKY, J. CONCURS

NAHRA, J. CONCURS

/S/
PRESIDING JUDGE
JOHN T. PATTON